

ReedSmith

Casey D. Laffey
Direct Phone: +1 212 549 0389
Email: claffey@reedsmith.com

MEMO ENDORSED

Reed Smith LLP
300 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

March 25, 2010

BY HAND AND OVERNIGHT COURIER

Honorable Kenneth M. Karas
United States District Judge
Southern District of New York
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____

Re: Zager v. Capital One Bank et al., Case No 09-civ-7019 (KMK)

Dear Judge Karas,

We represent defendants Capital One Bank USA, N.A. ("Capital One") and Richard D. Fairbanks ("Mr. Fairbanks") (collectively, "Defendants") in the above-referenced action and write in response to Plaintiff's March 19, 2010 letter ("March 19th Letter") and to request that this action be dismissed because Plaintiff has not timely filed an amended complaint and any amendment would be futile.

In Plaintiff's March 19th Letter, Plaintiff includes two alleged e-mail offers, dated May 4, 2009 and February 3, 2010, in an effort to demonstrate that Plaintiff relied on a second, subsequent offer made by Capital One and to substantiate his allegation in the Complaint that a contract was allegedly formed between Plaintiff and Capital One for the "0% APR for twelve months." However, both of these alleged offers cannot form the predicate for Plaintiff's breach of contract claim against Capital One. First, Plaintiff tries to mislead the Court by enclosing offers that were extended to other parties. In fact, both the May 4, 2009 and the February 3, 2010 offers are extended to Steven M. Zager and not to Plaintiff. Because Capital One only extends offers to customers on an individual basis, based on credit ratings and other factors, the only offers of relevance to this dispute are those extended to Plaintiff. Moreover, the May 4, 2009 offer is not even an offer but an email regarding a rewards point balance. Second, both of these alleged offers were made *well after* Plaintiff made his balance transfers on May 1, 2009. Therefore, there has been no offer extended to Plaintiff by Capital One that was accepted prior to the balance transfers and as such no contract was formed between the parties as a matter of law.

Moreover, Plaintiff has failed to comply with the Court's March 4, 2010 Order, giving Plaintiff until March 8, 2010 to serve and file an amended complaint. To date, no amended complaint has been filed or served by Plaintiff. In addition, Plaintiff's March 19th Letter is not timely as the Court's March 11, 2010 Order required Plaintiff's response to Defendants March 9, 2010 letter by March 18, 2010.

NEW YORK ♦ LONDON ♦ HONG KONG ♦ CHICAGO ♦ WASHINGTON, D.C. ♦ BEIJING ♦ PARIS ♦ LOS ANGELES ♦ SAN FRANCISCO ♦ PHILADELPHIA ♦ PITTSBURGH
OAKLAND ♦ MUNICH ♦ ABU DHABI ♦ PRINCETON ♦ NORTHERN VIRGINIA ♦ WILMINGTON ♦ SILICON VALLEY ♦ DUBAI ♦ CENTURY CITY ♦ RICHMOND ♦ GREECE

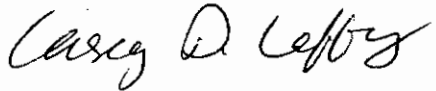
Honorable Kenneth M. Karas
March 25, 2010
Page 2

ReedSmith

Therefore, for the reasons set forth above and in our January 7, 2010 and March 5, 2010 letters, Defendants respectfully request that the Complaint be dismissed with prejudice.

We thank the Court for its attention to this matter.

Respectfully Submitted,



Casey D. Laffey

cc: Joshua N. Bleichman, Esq.

The Court will hold a
conference on April 15, 2010,
at 3:30

So ordered,



3/29/10